

*Case closed in Review;
no protest rec'd.*

Internal Revenue Service

Department of the Treasury

District Director

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

Employer Identification Number:

Date:

MAY 03 1996

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 since you are a corporation. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

1-11-96

4/23/96

4/26/96

4/30/96

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b) (2) of the Internal Revenue code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours, A

[REDACTED]

District Director

Enclosures: 3

cc: [REDACTED]

ENCLOSURE I

[REDACTED]

You were incorporated on [REDACTED] under the laws of the State of [REDACTED]. Amendments to the original Articles of Incorporation were filed on [REDACTED] and on [REDACTED]. By amendment, the name of your organization was changed from [REDACTED] to [REDACTED]. The Amended and Restated Code of Regulations which you submitted were approved by the organization in [REDACTED]. The Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Code, was filed on [REDACTED] and revised and resubmitted on [REDACTED]. In a letter dated [REDACTED], you agreed to apply for exemption under section 501(c)(3) effective [REDACTED], the postmarked date of your application.

The Articles of Incorporation currently provides that the purposes of the organization are as follows:

- a. To participate in charitable and educational activities without pecuniary gain or profit to its members and to receive and administer funds for those purposes in the City of [REDACTED] and the State of [REDACTED].
- b. To provide education and assistance to residents of the [REDACTED] in problems associated with purchasing, selling, leasing, repairing, maintaining and otherwise owning, using, or leasing real estate.
- c. To assist with and foster the improvement and rehabilitation of the [REDACTED].
- d. To provide a community based resource for members of the [REDACTED] in order to facilitate the improvement of said community.
- e. To lease and own personal and real property as required by the objectives and purposes of the corporation; and
- f. To engage in any other religious, charitable, scientific or educational purpose set forth in Section 501(c)(3) of the Internal Revenue Code.

The Amended and Restated Code of Regulations provides that the Trustees shall be considered to be the members and they shall have the rights and privileges of members. At least two-thirds of the trustees shall be residents of the [REDACTED] and with incomes not higher than the median family income of the City of [REDACTED]. Remaining positions are open to persons representing skills or connections needed by the organization.

ENCLOSURE I CONTINUED

[REDACTED]

The application provides that your activity has been a partnership with [REDACTED] in an [REDACTED]-unit development now completed on [REDACTED]. For [REDACTED] and [REDACTED], it is expected that the organization will focus on two additional projects - senior housing and low and moderate income housing. The immediate goals stated on the application are to 1) become a viable neighborhood development corporation with a strong board and good fund base; 2) provide affordable housing to bring back displaced residents; 3) participate actively in the revitalization of the [REDACTED]; and 4) support the development of [REDACTED] as a focal point of neighborhood-based organizations in the [REDACTED].

You submitted a document entitled "[REDACTED]". In this agreement there are two general partners specified. [REDACTED] (an [REDACTED] for-profit corporation) is the managing partner with [REDACTED] percent of the partnership interest and [REDACTED]. (this is specified as the name as the name under which your organization does business) has [REDACTED] percent of the partnership interest. The limited partner is specified to be [REDACTED] with [REDACTED] percent of the partnership interest. This document was executed on [REDACTED]. [REDACTED] Partnership Agreement was attached to and made a part of the Limited Partnership Agreement. The general partners agreed that the [REDACTED] Partnership Agreement, in its entirety, become part of the Limited Partnership Agreement and shall remain in full force and effect until otherwise amended.

[REDACTED] Agreement provides that the term of the Partnership shall begin on the date of the Agreement and shall continue until [REDACTED] unless dissolved earlier by agreement or pursuant to law. The general partners listed in the agreement are [REDACTED], a section 501(c)(3) organization, and [REDACTED]. [REDACTED] owned [REDACTED]% of the partnership interest and [REDACTED] owned [REDACTED]%. The agreement specifies that it is contemplated that the partners or subsidiaries of theirs will become general partners of a yet-to-be formed limited partnership which will be named "[REDACTED]". This agreement was executed in [REDACTED].

The [REDACTED] Agreement was amended and restated in [REDACTED]. Pursuant to this amendment, [REDACTED], /d/b/a/ [REDACTED] withdrew from the partnership.

The sources of income listed on your original application were appropriated seed money from [REDACTED], Developer's fee from [REDACTED], and an in-kind contribution of a staff person. The amended application provides that the organization's sources of support will include various grants. The only expenses listed for [REDACTED], [REDACTED] and [REDACTED] on the revised application were for legal fees and occupancy expenses.

ENCLOSURE I CONTINUED

[REDACTED]

For the period from [REDACTED] through [REDACTED], the organization submitted a statement of fiscal inactivity. The statement was notarized on [REDACTED] and certifies that "...Corporation has been dormant since its incorporation in [REDACTED]. No funds have been acquired or expended in the past [REDACTED] tax-years". For [REDACTED], the projected budget listed the developer's fee and in-kind use of a facility as income. The expenses included legal fees and in-kind use of a facility.

We have requested detailed descriptions about the activities your organization will conduct after you agreed to apply for exemption from the postmarked date of your application and submitted a revised Form 1023 in [REDACTED]. In response to our request for additional information, you indicated that you anticipate that your future projects will include owning property and renting the units to low income persons. You also indicated that you may enter into joint ventures similar to what was done for the [REDACTED] and that any fees obtained through such work would be immediately "invested" in another low income housing project in the [REDACTED]. The policies for the redevelopment corporation would be set by the Board of Trustees solely. Further, you indicated that the projects will be managed, maintained, and operated probably by a profit management corporation, but maybe by a 501(c)(3) corporation, if available.

You confirmed that no educational programs are currently being conducted by the organization and that none are planned. You also indicated that no assistance is provided to residents directly by your organization.

You submitted a letter from the City of [REDACTED] which stated that the [REDACTED] has been designated as a Community Reinvestment Area, eligible for property tax abatement for housing rehabilitation and new construction.

In a phone conversation with your Power of Attorney, [REDACTED], he indicated it was difficult to provide details because the organization had no specific projects. He indicated that the organization intends to provide elderly housing but that details could not be provided because the project has not yet begun.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states:

In order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

ENCLOSURE I CONTINUED

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In Housing Pioneers, Inc. v. Commissioner, 65 TCM 2191 1993-120, the court held that an organization whose purpose was to provide innovative and affordable housing for low income people, handicapped persons, and pre-and post-incarcerated persons did not qualify for exemption under section 501(c)(3). The organization intended to act as a co-general partner in for-profit limited partnerships which owned residential real estate used as low income housing and which qualified for the general business credit under IRC sections 42 and 38. By the organization's acting as co-general partner, the limited partnerships expected to be entitled to State property tax reductions. The organization's share of the funds from the property tax reductions were to be used by the organization to finance activities designed to accomplish certain charitable purposes. The court held that the organization's activities performed as co-general partner in for-profit limited partnerships substantially furthered nonexempt purposes, and private interests were served by its activities. The organization failed the operational and private inurement tests and as a result failed to qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 68-655, 1968-2 C.B. 213 provides that a nonprofit organization formed to promote racial integration in housing, to lessen neighborhood tension, and to prevent deterioration of neighborhoods may qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 70-585, 1970-2 C.B. 115 provides that nonprofit organizations created to provide housing for low and moderate income families thereby lessening neighborhood tensions, eliminating prejudice and discrimination, and combatting deterioration qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 79-18, 1979-1 C.B. 194 provides exemption under section 501(c)(3) of the Code to an organization which provides housing to elderly persons at the lowest feasible cost and maintains in residence those who subsequently become unable to pay.

Your organization is similar to the organization described in Housing Pioneers v. Commissioner, in that based on the information and the partnership agreements submitted, your organization did not have management control, control to enforce charitable operations, or majority interest and did not provide charitable services to the residents as its role in the operation of the partnership. Substantial nonexempt purposes have been furthered and private interests have been served. It is noted at this point that you have indicated that you intend to operate similar ventures in the future.

ENCLOSURE I CONTINUED

[REDACTED]

Due to the fact that your organization does not have any specific, detailed plans and have not yet provided low income housing or housing to the elderly, we hold that you have not shown that you are operated in a manner similar to the organizations described in Revenue Rulings 68-655, 70-585, or 79-18.

In order to meet the requirements of the regulations you must be operated exclusively for one or more purposes described in section 501(c)(3) of the Code. Your involvement in the partnership and your future proposed involvement in similar ventures are evidence that your organization has not been nor will it be operated for exclusively one or more exempt purposes described in section 501(c)(3) and you do not meet the operational test for exemption.

Based on the above facts and precedent, we find that your organization does not qualify for exemption under section 501(c)(3) of the Code.